



CF0000057558

C1

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 892/89

APPELLANT:-

IN JAIL

Dadu Ram alias Mohanlal (in Jail),
Son of Sukhdev Yadav,
Aged about 26 years,
Resident of Andhiyaripat,
Police Station- Akaltara,
Tahsil, Janjgir,
District, BILASPUR (M.P.)

V E R S U S

NON-APPLICANTS:

The State of Madhya Pradesh,
Through The District Magistrate,
~~Kakaxxakxakx~~ Akaltara,
Tahsil, Janjgir,
District, BILASPUR (MP).

MEMORANDUM OF CRIMINAL APPEAL UNDER
SECTION 374(2) OF THE CODE OF CRIMINAL
PROCEDURE AGAINST THE JUDGMENT AND
ORDER DATED 25TH AUGUST, 1989 PASSED BY
SHRI L.J. SINGH, FIRST ADDITIONAL SESSIONS
JUDGE TO THE COURT OF SESSIONS JUDGE,
BILASPUR IN SESSIONS TRIAL NO.24/89
CONVICTING THE APPELLANT UNDER SEC.304
PART I AND 323 OF THE PENAL CODE SENTENCING
HIM THEREUNDER TO R.I. FOR 7 YEARS & 6 MONTHS
RESPECTIVELY. SENTENCES ORDERED TO RUN
CONSECUTIVELY.

The Appellant being aggrieved by the judgment
and order aforesaid begs to prefer this appeal
interalia on the following grounds :-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>24.01.2007.</u> Shri C.R. Sahu, counsel for the appellant. Shri Arun Sao, Govt. Advocate for the State. Arguments heard. Judgment dictated as follows: <u>ORAL JUDGMENT</u> <u>(24.01.2007)</u> <u>SUNIL KUMAR SINHA, J.</u> This appeal is directed against the judgment and order of conviction and sentence dated 25.08.1989 passed in Session Trial No.24/89 by the First Additional Sessions Judge, Bilaspur. The learned trial Judge, after holding the appellant guilty of the offences punishable under Sections 304 Part I and 323 of IPC, sentenced him to undergo RI for seven years and RI for six months, respectively. He also directed the sentences to run separately. The case of the prosecution is that 4-5 days prior to 15.10.1988, the accused-appellant, showing his right over the open land (Kotar) of the deceased Sudarshan, had made some fencing by plantation on which deceased Sudarshan had resisted. But, the dispute between them	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	continued and on 15.10.1988 when the accused again went to the said kotar and started working over the land, the deceased again resisted, due to which certain quarrel took place and in the said quarrel the accused gave two pickaxe blows to the deceased causing injuries over his head and right hand. Lachanbai(PW-1), the wife of the deceased went to intervene, on which the accused also caused injury to her. The matter was reported to the Police Station by Lachanbai (PW-1) on which FIR (Ex-P/15) was recorded. Lachanbai was sent for medical examination under Ex-P/6 and deceased was also sent for medical examination. The injury report of Lachanbai was prepared vide Ex-P/7 and the injury report of the deceased was prepared vide Ex-P/8. Thereafter, the deceased was referred to the Government hospital, Bilaspur where he died on 18.10.1988. His body was sent for postmortem under Ex-P/12. The postmortem was conducted by Dr. P.C. Gupta who after conducting the postmortem prepared his report under Ex-P/12A and opined that the cause of death was due to shock and hemorrhage resulting from the injuries to vital organs like, brain and skull. After completion of the investigation by the police, charge-sheet was filed in the Court of J.M.F.C., Bilaspur, who in turn committed the case to the Court of Sessions, from	

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where the case was received by the First Additional Sessions Judge, Bilaspur who framed the charges for the offences under Section 302 read with Section 323 of I.P.C. and conducted the trial. After completion of the trial, the accused was convicted and sentenced as aforementioned.

The conviction and sentence of the accused is based upon the testimony of the two eyewitnesses, namely, Lachanbai and Fudeshanram (PW-2). PW-1 Lachanbai is the wife of the deceased and PW-2 Fudeshanram is the brother of the deceased.

Learned counsel appearing for the accused/appellant argues that since these witnesses are interested witnesses, therefore, their testimony could not be relied on and conviction based upon the testimony of these two ocular witnesses should be set aside.

Lachanbai (PW-1) states in her evidence that Kotar land is situated near her house, when she heard hue and cry she came out from her house and saw that some quarrel is going on between her husband and the accused. The Kotar land belongs to them. The accused has made some plantation on the said land and her husband has removed those plantations and this was the reason for quarrel between them. On that quarrel, the accused gave two pickaxe blows to her husband on which her

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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husband received injuries. She specifically mentioned that the accused had given two blows to her husband. She also states that when she was going to intervene, the accused also assaulted her with the pickaxe on which she also received injury on her head. She further states that at that time Fudeshanram(PW-2) also came to that spot and when the accused saw Fudeshanram (PW-2) he ran away from the spot. She says that thereafter she took her husband to the police station on rickshaw and a report was lodged. Her husband was admitted in hospital Akaltara, from where he was shifted to Bilaspur hospital where he died after three days.

Another witness Fudeshanram (PW-2), who is the younger brother of the deceased, also states that when he reached the place of occurrence, he saw that the accused is assaulting his brother Sudarshan with the help of pickaxe. He has specifically mentioned that he has seen the occurrence at a distance of 20-22 steps. He had also seen his sister-in-law (Bhabhi) Lachanbai at the scene of occurrence. He further mentions that after seeing him the accused ran away from the place of occurrence. Though lengthy cross-examination of these witnesses has been done by the defence counsel, but the defence counsel has not been able to bring

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	any such circumstance on the basis of which presence of these witnesses may be doubted or their testimony may be doubted on account of any other fact. The argument of learned counsel for the accused/appellant that since the two eyewitnesses, namely Lachanbai (PW-1) and Fudeshanram (PW-2) are the close relatives of the deceased i.e. wife and brother, their testimony should not be believed, cannot be accepted merely on this ground. About the testimony of the relative witnesses, it has been held in the matter of Rizan and others Vs. The State of Chhattisgarh (AIR 2003 SC. 976), vide Paragraph 6 of the above judgment, “that the relationship is not a factor to effect the credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such case, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible.” Relying upon the decision of the Apex Court reported in AIR 1973 SC Pg.1073, the Division Bench of the Kerala High Court also held in the matter of Sahadevan Rajan and others Vs. State of Kerala, reported in 1992 CRI.L.J. 2049 that the straightforward and	

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आदेश पत्रक (पूर्वानुबद्ध)

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	trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case. If you apply this principle into the facts of this case, it would appear that the evidence of these two witnesses are straightforward and since their presence on the scene of occurrence is reasonable and natural, merely on the ground that they are the relatives of the deceased, their testimony cannot be doubted. If the house of the deceased is admittedly near the place of occurrence and wife and the brother of the deceased are present in their house, it is quite natural conduct that when those relatives would hear the hue and cry of the deceased and they would feel that the life of the deceased is in danger, they would rush to the spot and they would be the ocular witnesses to the occurrence. In such circumstances, their conduct would be straightforward and their presence as well as testimony cannot be doubted and their evidence cannot be discarded. In the opinion of this Court, the learned Sessions Judge has committed no irregularity while relying on the testimony of the two witnesses resulting conviction of the accused/appellant.	

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	The learned Sessions Judge convicted the appellant under Section 304 Part-I of the I.P.C. The evidence of Dr. P.C. Gupta (PW-8) as well as the postmortem report would show that there was a fracture at the occipital region of the deceased. Even some portion of the brain was ruptured and blood clots were present there. The Sessions Judge has held that since the deceased has not died instantaneously, died 3 days after the incident during the course of treatment, the single injury caused to the head of the deceased was fatal and the assault took place after the quarrel between the uncle & nephew on account of certain land dispute and the incident took place all of a sudden on account of anger of the accused, therefore, the offence would not fall under Section 302 of I.P.C. and the same would not travel beyond Section 304 Part-I of I.P.C. In the opinion of this Court, the aforesaid view taken by the learned Additional Sessions Judge does not appear to be unreasonable. Learned counsel for the appellant could not point out any such circumstance on the basis of which, such view taken by the Sessions Judge can be interfered by this Court. In the opinion of this Court, there appears to be no merit in this appeal. The appeal being devoid substance, deserves to be dismissed	

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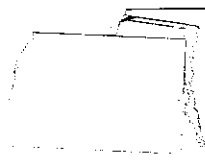
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आदेश पत्रक (पूर्वानुबद्ध)

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and the same is dismissed. It is said that the appellant is on bail. He shall surrender to the custody of the trial Court to undergo the remaining jail sentence awarded to him.



Sd/-
Sunil Kumar Sinha
Judge